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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Catherine Crispin,

Plaintiff,

v.

Atlanticus Holdings Corporation, and  
DOES 1 through 100 inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Catherine Crispin, an individual, based on information and belief, to allege as follows:

**INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

2. Plaintiff brings this action against Defendant Atlanticus Holdings Corporation (hereinafter “Defendant” or “Atlanticus”) for its abusive and outrageous conduct in connection with debt collection activity.

3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following findings and purpose in creating the Rosenthal Act:

(a)(1) The banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts. Unfair or deceptive collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers.

(2) There is need to ensure that debt collectors and debtors exercise their responsibilities to another with fairness and honesty and due regard or the rights of the other.

(b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts, as specified in this title.

4. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

5. The TCPA was designed to prevent calls like the ones described herein, and to protect the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers a choice as to how corporate entities may contact them and to prevent the nuisance associated with automated or prerecorded calls.

#### **JURISDICTION & VENUE**

6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. § 227.

7. This venue is proper pursuant to 28 U.S.C. §1391(b).

#### **GENERAL ALLEGATIONS**

8. Plaintiff Catherine Crispin (hereinafter “Plaintiff”) is an individual residing in the state of California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

1       9. At all relevant times herein, Atlanticus was a company engaged, by the use of mail,  
2 email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer  
3 debt,” as defined by Cal. Civ. Code §1788.2(f).

4       10. Upon information and belief Defendant Atlanticus was responsible for issuing a credit  
5 card to Plaintiff by the name of Emblem Mastercard.

6       11. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.  
7 Civ. Code §1788.2(c)

8       12. Plaintiff had taken out an unsecured loan with Defendant on or about October of 2016.

9       13. The loan Plaintiff took from Defendant was extended primarily for personal, family or  
10 household purposes and is therefore a “debt” as that terms is defined by the Calif. Civil Code §  
11 1788.2(d) of the Rosenthal Act.

12       14. Defendant has been attempting to collect on a debt that originated from monetary  
13 credit that was extended primarily for personal, family, or household purposes, and was  
14 therefore a “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2(3)  
15 of the Rosenthal Act.

16       15. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant  
17 rising from what Plaintiff is informed and believes was a consumer credit transaction, the  
18 money allegedly owed was a “consumer debt” within the meaning of California Civil Code §  
19 1788.2(f) of the Rosenthal Act.

20       16. Plaintiff is informed and believes that Defendant is one who regularly collects or  
21 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the  
22 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in  
23 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal  
24 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)  
25 of the Rosenthal Act.

26       17. Plaintiff’s account was an unsecured loan by way of an Emblem credit card that was  
27 issued with consent and authority from Atlanticus.

28       18. Plaintiff began making payments on the account.

1 19. At some point in December of 2016 Plaintiff became financially unable to keep up  
2 with the monthly payments.

3 20. Defendant began contacting Plaintiff in January of 2017 to inquire about the status of  
4 the loan and to collect on the payments that were no longer being made.

5 21. Plaintiff retained counsel to assist in dealing with Defendant's debt and to seek some  
6 type of financial relief.

7 22. Counsel for Plaintiff sent Defendant a letter confirming representation of Plaintiff and  
8 that Defendant was to no longer contact Plaintiff directly and that all calls/letters/collection  
9 efforts were to no longer be directed at Plaintiff.

10 23. Counsel for Plaintiff sent the letter of representation to Defendant on or about  
11 February 24, 2017.

12 24. Plaintiff informed Defendant that she was revoking her consent to be called on her  
13 telephone in February of 2017.

14 25. Defendant continued to contact Plaintiff between approximately March 2017 –  
15 present; the type of contact was through nearly daily phone calls to Plaintiff.

16 26. Counsel for Plaintiff sent a second letter regarding representation and again revoking  
17 consent for Plaintiff on April 3, 2017.

18 27. Despite the letter the calls still continued from Defendant.

19 28. Defendant would sometimes call Plaintiff numerous times each day demanding  
20 payment on the account.

21 29. Defendant would use an automatic dialing machine when placing the calls to Plaintiff.

22 30. Plaintiff was contacted daily nearly every day regarding non-payment of the debt  
23 owed to Defendant despite Defendant being notified that Plaintiff had retained counsel to deal  
24 specifically with the debt owed to Defendant.

25 31. Defendant's calls were frequent in nature and continued despite receiving written  
26 confirmation that Plaintiff was represented by an attorney and that she had revoked her consent  
27 to be contacted on her cellular phone.

28 **FIRST CAUSE OF ACTION**

(Violation of the Rosenthal Act)  
(Cal. Civ. Code §§ 1788-1788.32)  
(Against Defendants and Does 1-100)

32. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

33. Plaintiff provided written notice that she was represented by sending Defendant a letter with the name, address, and contact information of her attorney and informed Defendant that she was represented.

34. Defendant continued to call and attempt to make contact with Plaintiff despite receiving notice of representation and being informed that Plaintiff had retained counsel in an effort to deal with the debt that was owed to Defendant.

35. The calls and communications made by Defendant to Plaintiff were not related to statements of Plaintiff's account and were attempts to collect a debt.

36. Plaintiff received daily calls from Defendant from at least March 2017 – present.

37. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving notice that Plaintiff had retained an attorney.

**SECOND CAUSE OF ACTION**

(Violation of the TCPA)  
(47 USC § 227)  
(Against Defendants and Does 1-100)

38. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

39. Since at least about March of 2017 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

40. Plaintiff informed Defendant that she was revoking consent to be contacted by Defendant in February of 2017 and again in April of 2017.

41. Defendant called Plaintiff at least daily since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

42. Defendant would contact Plaintiff daily regarding payment on the accounts.

1 43. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver  
2 the collection messages without Plaintiff's prior express consent.

3 44. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing  
4 system" as defined by 47 U.S.C. §227(a)(1).

5 45. These calls were made to Plaintiff's cellular telephone and were not calls for an  
6 emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

7 46. Plaintiff expressly revoked any consent that may have previously been given to  
8 Defendant to be contacted by an automatic dialing machine in February of 2017.

9 47. Plaintiff again revoked her consent to be contacted by an automatic dialing machine in  
10 April of 2017.

11 48. Despite revoking consent two separate times Defendant continued to harass and call  
12 Plaintiff.

13 49. Plaintiff was contacted at least 33 (thirty three) times by Defendant.

14 50. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment as follows:

- 17 **a.** An award of actual damages pursuant to California Civil Code §1788.30(a), as  
18 will be proven at trial, which are cumulative and in addition to all other  
19 remedies provided for in any other cause of action pursuant to California Civil  
20 Code §1788.32.
- 21 **b.** An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code  
22 §1788.30(b), which are cumulative and in addition to all other remedies  
23 provided for in California Civil Code §1788.32; and
- 24 **c.** An award of costs of litigation and reasonable attorney's fees pursuant to Cal.  
25 Civ. Code §1788.30(c).
- 26 **d.** An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C.  
27 §227(b)(3)(C) for each and every violation.
- 28 **e.** Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct

1 in the future.

2 **SAGARIA LAW, P.C.**  
3 Dated: May 22, 2017 By: /s/ Scott Johnson  
4 Scott Sagaria, Esq.  
5 Scott Johnson, Esq.  
6 Attorneys for Plaintiff

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands trial of this matter by jury.

9 **SAGARIA LAW, P.C.**  
10 Dated: May 22, 2017 /s/ Scott Johnson  
11 Scott Sagaria, Esq.  
12 Scott Johnson, Esq.  
13 Attorneys for Plaintiff  
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